

the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information.

(4) At the discretion of the Director, grant applicants and recipients may be required to provide such information and data as are necessary to investigate complaints and conduct compliance reviews on grounds prohibited under the nondiscrimination and equal opportunity provisions of JTPA and this part, other than race/ethnicity, sex, age, and disability.

(5) At the discretion of the Director, recipients may be required to provide such particularized information and/or to submit such periodic reports as the Director deems necessary to determine compliance with the nondiscrimination and equal opportunity provisions of JTPA or this part.

(6) At the discretion of the Director, grant applicants may be required to submit such particularized information as is necessary to determine whether or not the grant applicant, if funded, would be able to comply with the nondiscrimination and equal opportunity provisions of JTPA or this part.

(7) Service Providers. A service provider's responsibility for collecting and maintaining the information required pursuant to this section may be assumed by the Governor, SDA grant recipient or Substate grantee, as provided in the State's Methods of Administration.

(b) *Access to sources of information.* (1) Each grant applicant and recipient shall permit access by the Director during normal business hours to its premises and to its employees and participants, to the extent that such individuals are on the premises during the course of the investigation, for the purpose of conducting complaint investigations, compliance reviews, monitoring activities associated with a State's development and implementation of a Methods of Administration, and inspecting and copying such books, records, accounts and other materials as may be pertinent to ascertain compliance with and ensure enforcement of the nondiscrimination and equal opportunity provisions of JTPA or this part.

(2) Asserted considerations of privacy or confidentiality shall not be a basis

for withholding information from the Directorate and shall not bar the Directorate from evaluating or seeking to enforce compliance with the nondiscrimination and equal opportunity provisions of JTPA and this part. Information obtained pursuant to the requirements of this part shall be used only in connection with compliance and enforcement activities pertinent to the nondiscrimination and equal opportunity provisions of JTPA and this part. Whenever any information required of a grant applicant or recipient is in the exclusive possession of another agency or institution which, or person who, fails or refuses to furnish such information, the grant applicant or recipient shall provide certification to the Directorate of such refusal and the efforts it has made to obtain the information.

(c) *Record retention requirements.* (1) Each recipient shall maintain for a period of not less than three years from the close of the applicable program year, applicant, eligible applicant, participant, terminnee, employee and applicant for employment records; and such other records as are required under this part or by the Director. (2) Records regarding complaints and actions taken thereunder shall be maintained for a period of not less than three years from the date of resolution of the complaint.

(d) *Confidentiality.* The identity of any person who furnishes information relating to, or assisting in, an investigation or a compliance review shall be kept confidential to the extent possible, consistent with a fair determination of the issues. A person whose identity it is necessary to disclose shall be protected from retaliation (see § 34.8).

(e) Where designation of persons by race or ethnicity is required, the guidelines of the Office of Management and Budget shall be used.

### Subpart C—Governor's Responsibilities to Implement the Nondiscrimination and Equal Opportunity Requirements of JTPA

#### § 34.30 Application.

This subpart applies to State Programs as defined in § 34.2. However, the

provisions of § 34.32 (b) and (c) do not apply to State Employment Security Agencies (SESAs), because the Governor's liability for any noncompliance on the part of a SESA cannot be waived.

#### **§ 34.31 Recordkeeping.**

The Governor shall ensure that recipients collect and maintain records in a manner consistent with the provisions of § 34.24 and any procedures prescribed by the Director pursuant to § 34.24(a)(1). The Governor shall further ensure that recipients are able to provide data and reports in the manner prescribed by the Director.

#### **§ 34.32 Oversight and liability.**

(a) The Governor shall be responsible for oversight of all JTPA-funded State programs. This responsibility includes ensuring compliance with the non-discrimination and equal opportunity provisions of JTPA and this part, and negotiating with the recipient to secure voluntary compliance when non-compliance is found under § 34.45.

(b) The Governor and the recipient shall be jointly and severally liable for all violations of the nondiscrimination and equal opportunity provisions of JTPA and this part by the recipient, unless the Governor has:

(1) Established and adhered to a Methods of Administration, pursuant to § 34.33, designed to give reasonable guarantee of the recipient's compliance with such provisions;

(2) Entered into a written contract with the recipient which clearly establishes the recipient's obligations regarding nondiscrimination and equal opportunity;

(3) Acted with due diligence to monitor the recipient's compliance with these provisions; and

(4) Taken prompt and appropriate corrective action to effect compliance.

(c) If the Director determines that the Governor has demonstrated substantial compliance with the requirements of paragraph (b) of this section, he or she may recommend to the Secretary that the imposition of sanctions against the Governor be waived and that sanctions be imposed only against the noncomplying recipient.

#### **§ 34.33 Methods of Administration.**

(a)(1) Each Governor shall establish and adhere to a Methods of Administration for State programs as defined in § 34.2. In those States in which one agency contains both SESA and JTPA programs, the Governor may develop a combined Methods of Administration.

(2) Each Methods of Administration shall be designed to give reasonable guarantee that all recipients will comply and are complying with the non-discrimination and equal opportunity provisions of JTPA and this part.

(b) The Methods of Administration shall be:

(1) In writing;

(2) Updated periodically as required by the Director; and

(3) Signed by the Governor.

(c) The Methods of Administration shall, at a minimum:

(1) Describe how the requirements of §§ 34.20, 34.21, 34.22, 34.23, 34.24, 34.31, and 34.42 have been satisfied; and

(2) Include the following additional elements:

(i) A system for periodically monitoring the compliance of recipients with this part, including a determination as to whether the recipient is conducting its JTPA-funded program or activity in a nondiscriminatory way;

(ii) A system for reviewing the non-discrimination and equal opportunity provisions of job training plans, contracts, assurances, and other similar agreements;

(iii) Procedures for ensuring that recipients provide accessibility to individuals with disabilities;

(iv) A system of policy communication and training to ensure that members of the recipients' staffs who have been assigned responsibilities pursuant to the nondiscrimination and equal opportunity provisions of JTPA or this part are aware of and can effectively carry out these responsibilities;

(v) Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found; and

(vi) Supporting documentation to show that the commitments made in the Methods of Administration have been and/or are being carried out. Supporting documentation includes, but is not limited to: policy and procedural